

**VOLUNTARY CLEANUP CONTRACT
09-5602-NRP**

**IN THE MATTER OF
POE MILL, GREENVILLE COUNTY
and
GREENVILLE COUNTY REDEVELOPMENT AUTHORITY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and the Greenville County Redevelopment Authority, with respect to the Property located northeast of the intersection of Buncombe Road and A Street in Greenville, South Carolina. The Property is 11.02 acres in size and is identified by Tax Map Serial Number 0153000900200. In entering this Contract, the Department relies on the representations of the "Information and Certification" of September 28, 2009 submitted by the Greenville County Redevelopment Authority, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended on June 11, 2008, and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq., the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq., or

the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "GCRA" means the Greenville County Redevelopment Authority.
- B. "Beneficiaries" means GCRA's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, assigns and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Information and Certification attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of GCRA. The Property is bounded generally by Buncombe Road to the southwest, a railroad and industrial property to the northwest, residential property to the northeast, and A Street and vacant land and residential property to the southeast.

- H. "Receptor" means an individual that is presently or potentially exposed to contamination
- I. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause contamination upon release to the environment.
- J. "Waste Materials" means any contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

2. Based on the information known by the Department, the following are asserted for this Contract:

- A. Owners and Operators: The historical owners and operators of the Property are as follows:

F.W. Poe Manufacturing Company	1895 to 1957
Ely & Walker Dry Goods Company	1957 to 1959
Burlington Industries	1959 to 1983
Poe Mill Corporation	1983 to 1984
Poe Mill Associate, A.S.C. Partnership	1984 to 1985
Harry Stiritiz, Jr., Zeinith Guy, Harold Katzman and Joe Brydon	1985 to 1987
LGL Investments, a S.C. Partnership	1987 to 2003
Clifton Two Partners Corporation	2003 to present

- B. Property and Surrounding Areas: The Property formerly operated as a textile mill from 1896 to 1977. During its operation, the mill grew to include at least three weaving rooms as well as an engine room, machine shop, cotton warehouses, coal boiler towers, and a water supply reservoir. There is no evidence that dyeing and/or finishing operations were conducted at this facility. The mill was powered by steam fueled by coal.
- C. The Property is currently vacant and has been unoccupied since 1977. The mill buildings burned down in 2003 followed by demolition of some of the remaining partial structures leaving the two smokestacks and a large amount of debris. Large piles of brick, tile, concrete rubble, rebar, and remnant wooden and steel beams comprise approximately four acres of the 11-acre Property. Currently, the Property is unfenced and uncontrolled. Homeless people intermittently use a basement area near Buncombe Street for shelter. Some areas may be used for dumping of household garbage, while another area is used as a make-shift skate park.
- D. Phase I Assessment: The Phase I Investigation (AECOM, August 10, 2009) identified onsite recognized environmental conditions including the presence of staining that appears to be coal tar residue observed on the partial walls and building debris located in the vicinity of the former engine and boiler room area.
- E. Party Identification: The Greenville County Redevelopment Authority (GCRA) is an independent agency of Greenville County, a South Carolina local government. The principal place of business for GCRA is 301 University Ridge Road, Greenville, South Carolina 29601. GCRA affirms that it has the financial resources to conduct the response action pursuant to this Contract.
- F. Proposed Redevelopment: GCRA will acquire the Property and intends to utilize the Property for recreation and commercial development to enhance the surrounding neighborhood.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. GCRA certifies that it is a Non-Responsible Parties at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. GCRA agrees to conduct the response actions specified in the sub-paragraphs below with the exception of some assessment activities to be conducted by the Department on behalf of GCRA through a Site Specific Assessment (SSA). The SSA will include an initial assessment of soil and groundwater quality as specified in subparagraphs 4.D. and 4.E below. The Department or its designee shall prepare an initial Work Plan for the SSA within sixty days of the execution date of this Contract, setting forth methods and schedules for the initial assessment of soil and groundwater quality. GCRA acknowledges that this initial assessment may find distributions of existing contamination requiring additional assessment or corrective actions on the Property that cannot be anticipated with this Contract. GCRA agrees to perform the additional response actions consistent with the intended uses of the Property under the purview of this Contract; however, GCRA may seek an amendment of this Contract to clarify its further responsibilities. GCRA shall perform all response actions, whether of GCRA's choosing or expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). GCRA shall identify and obtain the applicable permits before beginning any action (except for those actions undertaken by the Department as part of the SSA).
- 2). Work Plans and all associated reports shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.

- 3). Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent details of the response actions.
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.
 - b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards and Regulations-R.61-71. The Work Plan shall provide sufficient detail to support issuance of the well approvals.
 - c). The laboratory analyses shall be as required in the media-specific subparagraphs below, but may include: 1) the full EPA-TAL (Target Analyte List); 2) the full EPA-TCL (Target Compound List); 3) the TAL-Metals (EPA-TAL without Cyanide); 4) SVOCs (EPA-TCL Semi-Volatile Organics; 5) VOCs (EPA-TCL Volatile Organic Compounds); or, 6) Pesticides (the EPA-TCL Pesticides).
 - d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the "MCL-Based SSL" if listed.
- 4). All GCRA work plans and associated reports shall include the names, addresses, and telephone numbers of GCRA's consulting firm(s), analytical laboratories, and GCRA's contact person for matters relating to this Contract.
 - a). The analytical laboratory shall possess applicable Certification, as per South Carolina R.61-81, for the test methods to be used during this assessment.
 - b). GCRA shall notify the Department in writing of changes in the contractor or laboratory.
- 5). The Department will notify GCRA in writing of approvals or deficiencies in GCRA's work plans or reports.

- 6). GCRA, or its designee, shall respond in writing within thirty days to the Department's comments with regards to deficiencies.
- 7). GCRA shall implement work plans upon written approval from the Department.
- 8). GCRA shall inform the Department at least five (5) working days in advance of all field activities, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 9). GCRA shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. GCRA shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Assess Waste Materials and Segregated Sources:

- 1). Prior to initiation of the Department's Site Specific Assessment activities, GCRA shall remove building debris and vegetation in areas identified where access is needed to collect soil and groundwater samples. Sufficient clearing shall be completed to allow vehicle access to the central area of the property, to clear debris and vegetation from the area around the two smokestacks, in the area of the engine room, and the former weaving room/reservoir located northeast of the former engine room. Within the former engine room area, debris shall be cleared to the ground surface in a limited area between large brick support features where heavy oil staining is present.
- 2). As part of the Site Specific Assessment, to be conducted through the Department's environmental contractor, at least one waste material sample shall be collected of the heavily stained brick in the former engine room area for analysis for TAL metals and TCL SVOCs and PCBs. Up to two additional waste material samples shall be collected should they be discovered during

SSA activities.

- 3). GCRA shall assess Waste Materials and Segregated Sources upon their discovery on the Property at any time during assessment, corrective action, or development activities (with the exception of such assessment to be conducted by the Department or its contractor during SSA activities).
 - a). GCRA's assessment shall include characterization of the contaminant concentrations, and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable.
 - b). GCRA shall expeditiously stabilize or remove from the Property any Segregated Source that has not yet released all contents to the environment upon discovery.
 - c). GCRA shall notify the Department if a release of contamination occurs as a result of its assessment, stabilization or removal actions. GCRA shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

C. Conduct a well and surface water survey:

- 1). If deemed necessary by the Department based on groundwater quality results, GCRA shall map all surface waters and public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). GCRA shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to GCRA, of the well owner or occupant of the residence served by the well.

D. Department SSA: Assessment of soil quality across the Property:

- 1). The SSA, to be conducted through the Department's environmental contractor, shall include collection and analysis of up to sixteen soil samples at eleven locations. Up to five sample locations will target areas of suspected contaminant releases in the engine and boiler room area and any other such areas that may be identified after limited removal of vegetation and debris by GCRA prior to sampling. These biased samples shall include collection of both surface and subsurface soil samples. Up to four additional locations shall be unbiased samples on a grid to evaluate general soil quality across the Property consisting of surface soil samples only. Additionally, surface soil samples shall be collected from one background location.
- 2). The surface soil samples shall be analyzed for TAL-Metals and TCL SVOCs and PCBs. The subsurface samples shall be analyzed for TAL-Metals, and TCL VOCs, SVOCs and PCBs dependent on field screening and results of surface soil samples. A minimum of two surface soil samples from probable impacted areas shall be analyzed for the full EPA-TAL and EPA-TCL.
- 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

E. Department SSA: Assessment of groundwater quality:

- 1). The SSA shall include evaluation of groundwater quality and groundwater flow direction on the Property. Assessment shall include installation and collection of groundwater samples from up to four (4) monitoring wells to be installed in four locations across the property. Specific locations shall include:
 - a). a presumed background location
 - b). one location immediately downgradient of the former engine room area
 - c). up to two other appropriate locations to evaluate groundwater quality across the property.

- 2). Samples from all monitoring wells shall be analyzed for TAL- Metals, VOCs and

SVOCs. In addition, the sample from one downgradient well shall be analyzed for the full TAL/TCL parameters.

- 3). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for "Tapwater", if not specified in R.61-58.

F. Evaluate and control potential impacts to indoor air:

- 1). GCRA shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with any building construction to be proposed on the Property.
- 2). GCRA's evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of soil gas samples from the proposed footprint of buildings to be constructed on the site over any areas potentially subject to Vapor Intrusion. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using an depth-appropriate attenuation factor). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.
- 3). The Department may allow GCRA to implement Vapor Intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). GCRA shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted indoor air concentration exceeds a 10^{-6} risk

calculated for occupational exposure. The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

G. Institute reasonable contamination control measures:

- 1). GCRA shall take reasonable measures to limit or prevent human exposure to existing contamination on the Property:
 - a). Measures shall be required for Waste Materials and contaminated media with concentrations in excess of appropriate human-health and ecological risk-based exposure standards via plausibly complete routes of exposure. The measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the contamination.
 - i. The measures shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
 - ii. GCRA shall provide appropriate documentation to demonstrate satisfactory completion of the control measures for Department review and approval prior to obtaining a Certificate of Completion.
 - b). GCRA shall remove from the Property any Segregated Sources of contamination that have not yet released all contents to the environment.
 - i. The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - ii. GCRA shall document the characterization and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

H. Monitor and/or abandon the monitoring wells:

- 1). GCRA shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the

Department's determination of potential adverse effects on nearby receptors. The Department will determine the frequency and duration of the monitoring program on a case-specific basis.

- 2). The Department shall abandon the monitoring well(s) installed during the Site Specific Assessment at a time when the Department determines there are no further needs for the wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

HEALTH AND SAFETY PLAN

5. GCRA shall prepare and submit under separate cover from all work plans (other than the Department's SSA work plan), a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. GCRA agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by GCRA.

PUBLIC PARTICIPATION

6. GCRA and the Department will foster public participation to implement this Contract as follows:
 - A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by GCRA.
 - B. GCRA shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign will state "Voluntary Cleanup Project by the Greenville County

Redevelopment Authority under Voluntary Cleanup Contract 09-5602-NRP with the South Carolina Department of Health and Environmental Control.” The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of GCRA. Contact information for the Department shall state “TOLL-FREE TELEPHONE: 1-866-576-3432”.

- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- 3). GCRA shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). GCRA agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). GCRA shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, GCRA shall restore the sign within two days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. GCRA shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within 30 days of the execution date of this Contract and semi-annually thereafter.

A. The updates may be in summary letter format, but should include information about:

- 1). The actions taken under this Contract during the previous reporting period;
- 2). Actions scheduled to be taken in the next reporting period;

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- 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
- 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

SCHEDULE

8. GCRA shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. GCRA shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. GCRA or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Covenant) for the Property if contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:

A. The Department shall prepare and sign the Covenant prior to providing it to GCRA. An authorized representative of GCRA or its Beneficiaries shall sign the Covenant within ten days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.

B. GCRA or its Beneficiaries shall file the executed Covenant with the Registrar of
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Deeds for the county where the Property is located.

- C. GCRA or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page number where the Covenant has been recorded.
- D. In the event that contamination exceeds residential standards on a portion of the Property, GCRA or its Beneficiaries may create a new parcel that will be subject to the Covenant.
- E. The Covenant shall reserve a right of entry and inspection for GCRA or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). GCRA or its Beneficiaries shall ensure that the restrictions established by the Covenant remain on any subdivided property.
 - 2). GCRA or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Covenant regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- F. GCRA or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Covenant to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.
- G. The Department may amend the Covenant in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change; however, said amendment shall not be applied retroactively unless expressly provided for in the enabling legislation.

An amendment may strengthen, relax, or remove restrictions based on the Regional

Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be duly executed and recorded with the county using procedures similar to those detailed above.

NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing.

Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial delivery service company; or, 4) hand delivery to the other party.

A. All correspondence to the Department, including two hardcopies OR one hardcopy and an electronic copy on a compact disc, of all Work Plans and reports, and one hardcopy of the Health and Safety Plan shall be submitted to:

Angela Gorman
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. GCRA's designated contact person as of the effective date of this contract shall be:

Martin Livingston, Executive Director
Greenville County Redevelopment Authority
301 University Ridge Road, Suite 2500

Greenville, SC 29601

FINANCIAL REIMBURSEMENT

11. GCRA or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to GCRA on a quarterly basis. In recognition of GCRA's non-profit status, the Department may waive reimbursement of oversight costs, exclusive of the cost incurred for public participation. The Department reserves the right to re-instate oversight billing upon thirty-day notice to GCRA; however, said billing shall not include any costs incurred by the Department prior to receipt of the notice. All costs are payable within thirty days of the Department's invoice submitted to:

Martin Livingston, Executive Director
Greenville County Redevelopment Authority
301 University Ridge Road, Suite 2500
Greenville, SC 29601

ACCESS TO THE PROPERTY

12. GCRA agrees the Department has an irrevocable right of access to the Property after GCRA acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:

- A. GCRA shall request a Certificate of Completion after the response actions are completed and any required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. The Department will issue the Certificate of Completion with its covenant not to sue upon determining that GCRA has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that GCRA or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if GCRA or its Beneficiaries do not satisfactorily complete the requirements of the Contract.

ECONOMIC BENEFITS REPORTING

- 14. GCRA or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two years after the execution date of this Contract, and annually until two years after redevelopment of the Property is complete. GCRA shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

TRANSFER OF CONTRACT

15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, GCRA, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion of the Property:

- A. GCRA or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. GCRA and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property.
- C. If the Certificate of Completion has not been issued, GCRA or its Beneficiaries shall seek approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new individual or entity. The protections shall not inure to an individual or entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new individual or entity showing it:
 - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

- D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, GCRA

or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.
- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential use provided the Covenant is recorded on the master deed for the residential development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

E. If a Certificate of Completion has been issued and the Property is not subject to a Covenant or other continued obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. GCRA, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party.

Termination shall be subject to the following:

A. The Department may terminate this Contract only for cause and shall provide opportunity for GCRA or its Beneficiaries to correct causes of termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms of this Contract;
- 2). Change in GCRA's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;

- 4). Failure of GCRA or its Beneficiaries to implement appropriate response actions for additional contamination or releases caused by GCRA or its Beneficiaries, or
- 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
- 6). Failure by GCRA or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this contract; or,
- 7). Failure by GCRA or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of GCRA's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.

B. Should GCRA or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by GCRA or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.

C. Termination of this Contract by any party does not end the obligations of GCRA or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract prior to the date that any such termination takes effect. Payment for such costs shall become immediately due.

D. The protections provided to GCRA or its Beneficiaries shall be null and void as to any party who willfully or intentionally participated in actions giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party who did not

willfully or intentionally participate in the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. GCRA and its Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

A. Effective on the date this Contract is first executed by the Department:

- 1). Protection from CERCLA contribution claims.
- 2). Protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site.
- 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.

B. Effective on the date the Certificate of Completion is issued by the Department:

- 1). The Department's covenant not to sue GCRA and its Beneficiaries for Existing Contamination except for releases and consequences caused by GCRA or its Beneficiaries.
- 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.

C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by GCRA and its Beneficiaries. The Department retains all rights under State and Federal laws to compel GCRA and its Beneficiaries to perform or pay for response activity for contamination, releases and consequences created by GCRA or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than GCRA and

its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than GCRA and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY GCRA

19. GCRA retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. GCRA and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, GCRA and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. GCRA and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to GCRA or its Beneficiaries. GCRA and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered contamination. For purposes of this clause, newly discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY GCRA AND ITS BENEFICIARIES

21. In consideration of the protections from the Department, GCRA and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or

omissions, or the Department's willful violation of the terms of this agreement.

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Office of General Counsel

DATE: _____

GREENVILLE COUNTY REDEVELOPMENT AUTHORITY

BY:  _____

DATE: 11-30-09

Martin Livingston, Executive Director
Printed Name and Title